

**Supplemental Letter of Findings Number: 04-20140003**  
**Sales and Use Tax**  
**For Tax Years 2010-12**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Sales and Use Tax—Imposition.**

**Authority:** IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-8](#).

Taxpayer protests the assessment of use tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana manufacturer. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2010-2012. The audit resulted in the assessment of additional sales and use tax for the years at issue. Taxpayer protested the imposition of sales and use tax on certain items. An administrative hearing was conducted and a Letter of Findings resulted. Taxpayer requested a rehearing on one item denied in the original Letter of Findings. The Department granted the rehearing request. An administrative rehearing was conducted and this Supplemental Letter of Findings results. Further facts will be presented as required.

**I. Sales and Use Tax—Imposition.**

**DISCUSSION**

Taxpayer protests the imposition of sales and use tax on a specific item listed as taxable in the Department's calculations for the years 2010, 2011, and 2012. Taxpayer claims that knit gloves should be exempt because they are items used in the production process. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes.

Next, [45 IAC 2.2-5-8](#)(c) states in part:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

**EXAMPLES**

...  
(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

...  
(F) Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

....  
(Emphasis added).

Taxpayer claims the knit gloves are used in production "to prevent contamination of the product during production" as stated in [45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#). Taxpayer provided documentation demonstrating the knit gloves are necessary to prevent oil from a worker's hands from getting onto the aluminum pieces. If oil gets onto the pieces, then the paint dries unevenly resulting in the pieces needing to be reworked. Therefore, the knit gloves are exempt under [45 IAC 2.2-5-8](#) because it is not possible to prevent contamination of the product during production without them.

### FINDING

Taxpayer's protest to the imposition of use tax on knit gloves is sustained.

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